

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ANIKA JOHNSON,

Plaintiff,

vs.

INTERNAL REVENUE SERVICE,

Defendant.

2:15-cv-00461-LDG-VCF

**ORDER AND REPORT AND  
RECOMMENDATION**

Before the court is Plaintiff's Motion for an Order to Show Cause (#9). Plaintiff filed her complaint on March 12, 2015. (#1). Summons issued to the Internal Revenue Service ("IRS") on May 5, 2015. (#3). On May 6, 2015, Plaintiff filed her Certificate of Service on the Summons. (#4). On May 6, 2015, Plaintiff also filed her first Motion for Order to Show Cause, requesting that the Court order Defendant to show cause regarding a judgment (#5). The first Motion for Order to Show Cause (#5) was denied because it was prematurely filed. On July 27, 2015, Plaintiff filed an executed Summons. (#8).

Under Federal Rules of Civil Procedure 4(c)(2), service of the Summons must be made by, "[a]ny person who is at least 18 years old and not a party..." Fed. R. Civ. P. 4(i) sets for the requirements for effecting service on the United States and Its Agencies, Corporations, Officers, or Employees. Here, service of Plaintiff's Summons was not in compliance with Fed. R. Civ. P. 4(c)(2) as Plaintiff mailed the Summons herself. (#8). Additionally, the record before the court indicates that Plaintiff has not complied with Fed. R. Civ. P. 4(i).

Pursuant to Local Rule 7-2 (a), [a]ll motions, unless made during a hearing or trial, shall be in writing and served on all other parties who have appeared. Under IRM § 25.3.3.1, the IRS has 60 days from the date of service of the summons and complaint to file a response. Here, Defendant has not yet

1 appeared nor been served. Plaintiff has not correctly effected service of process on the IRS; thus, the  
2 Motion for Order to Show Cause (#9) is prematurely filed.

3 On July 13, 2015, Plaintiff was given notice regarding intention to dismiss pursuant to Rule 4(m)  
4 of the Federal Rules of Civil Procedure. (#7).

5 Fed. R. Civ. P. 4(m) provides, in part, as follows:

6 ". . . If a defendant is not served within 120 days after the complaint is filed,  
7 the court – on motion or on its own after notice to the plaintiff – must  
8 dismiss the action without prejudice against the defendant or order that  
9 service be made within a specified time. But if the plaintiff shows good  
10 cause for the failure, the court must extend the time for service for an  
11 appropriate period. . ."

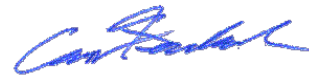
12 The last day to effect process of service was July 10, 2015. Here, the time to effect process of  
13 service on the IRS has passed and proper service has not been met pursuant to Fed. R. Civ. P. 4(c)(2) and  
14 4(m).

15 Accordingly,

16 IT IS HEREBY RECOMMENDED that this case be dismissed without prejudice.

17 IT IS FURTHER ORDERED that the Motion for an Order to Show Cause (#9) is DENIED and  
18 the Summons returned (#8) is STRICKEN.

19 DATED this 26th day of August, 2015.

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22 CAM FERENBACH  
23 UNITED STATES MAGISTRATE JUDGE  
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